

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Petrovic et al.

Title: MEDIA MONITORING, MANAGEMENT AND INFORMATION
SYSTEM

Appl. No.: 10/681,953

Filing Date: 10/8/2003

Notice of
Allowance Date: 1/27/2010

Examiner: USTARIS, JOSEPH G.

Art Unit: 2424

Confirmation
Number: 7904

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent application. The Notice of Allowance and Fee(s) Due for the above noted application was mailed on 1/27/2010.

The Patent Office has determined that the patent was entitled to 1568 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia

finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 2041 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	2071 days
(b) Total Applicant delay:	30 days
Final PTA Determination:	2041 days

Applicants therefore respectfully request that the patent be accorded 2041 days PTA.

The patent application is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date April 26, 2010

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Patent Term Adjustment Calculation System

Docket Number: 093196-0851
Application Number: 10/681953
Patent Number: N/A

Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Application Filing Date	10/08/2003	0		
14 month From Application date	12/08/2004	427		
3 Year Period Starts	10/08/2006	1,096		
Restriction Requirement	04/24/2009	2,025	(1598)	
Restriction Requirement Response Received at PTO	05/22/2009	2,053		
Non-Final Office Action	08/04/2009	2,127		
Non-Final Office Action + 3 months	11/04/2009	2,219		
Non-Final Office Action Rsp. Rcv'd at PTO	12/04/2009	2,249		30
Notice of Allowance	01/27/2010	2,303		
Projected Patent Grant Date	08/10/2010	2,498	(1402) 2071	
Totals:			2,071	30
PTA:			2,041	

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